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**Warehouse Union Local 6, International Longshore  
& Warehouse Union, AFL-CIO and Brian Belmonte.**  
Case 20-CB-11486-1

November 19, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

Upon a charge filed by Brian Belmonte on April 10, 2001, the General Counsel of the National Labor Relations Board issued a complaint on July 31, 2001 against Warehouse Union Local 6, International Longshore & Warehouse Union, AFL-CIO, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 28, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On October 2, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 28, 2001, notified the Respondent that unless an answer was received by September 4, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, Professional Messenger, Inc. d/b/a Professional Messenger Courier, Express Services Overnight and Taylor-Price Attorney Service, a California corporation with facilities in Santa Clara and San

Francisco, California (the Employer), has been engaged in the business of providing messenger and courier services. During the calendar year ending December 31, 2000, the Employer, in conducting its business operations described above, sold and shipped goods and/or services valued in excess of \$50,000 directly to customers located outside the State of California.

We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times by virtue of Section 9(a) of the Act, the Respondent has been the exclusive bargaining representative of the following employees of the Employer (the unit):

All messenger and courier employees; excluding dispatchers, customer service representatives and on-site service personnel, office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement, effective on its face for the period September 7, 2000 to September 6, 2001, covering conditions of employment of the unit.

Since an unknown date in November 2000, the Respondent has refused to process a grievance related to Belmonte's rate of pay.

By engaging in the conduct set forth above, in connection with its representative status as described above, the Respondent has failed to represent Belmonte for reasons that are unfair, arbitrary, and invidious, and has breached the duty of fair representation it owes to the employees it represents.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has been restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(b)(1)(A) of the Act by refusing since November 2000 to process a grievance related to Brian Belmonte's rate of pay, we shall provide for the remedy prescribed in *Iron*

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

*Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375 (1998). Accordingly, we shall order the Respondent to promptly request the Employer to consider Belmonte's grievance and, if it agrees to do so, process the grievance pursuant to the September 7, 2000 to September 6, 2001 collective-bargaining agreement between the Respondent and the Employer.

In addition, we shall order the Respondent to permit Belmonte to be represented by an attorney of his own choosing at any grievance proceeding, including arbitration or other resolution proceedings that may follow from the Respondent's efforts on Belmonte's behalf, and pay the reasonable legal fees of that attorney. In the event that it is not possible to pursue the grievance, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful, the Respondent shall make Belmonte whole for any increases in damages suffered as a consequence of its refusal to process his grievance, with interest.<sup>1</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, Warehouse Union Local 6, International Longshore & Warehouse Union, AFL-CIO, Oakland, California, its officers, agents, and representatives, shall

## 1. Cease and desist from

(a) Refusing to process the grievance relating to Brian Belmonte's rate of pay, or a grievance filed by any other employee, for unfair, arbitrary, or invidious reasons.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly request Professional Messenger, Inc. d/b/a Professional Messenger Courier, Express Services Overnight and Taylor-Price Attorney Service to consider the grievance of employee Brian Belmonte related to his rate of pay and, if the Employer agrees to do so, process the grievance with due diligence.

(b) Permit Brian Belmonte to be represented by his own counsel at any grievance proceedings, including arbitration or other resolution proceedings, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent to pursue the grievance, and if the General Counsel

of the National Labor Relations Board shows in compliance proceedings that a timely pursued grievance would have been successful, make whole Brian Belmonte for any increase in damages suffered as a result of the Respondent's refusal to process the grievance, with interest.

(d) Within 14 days after service by the Region, post at its offices and meeting halls in Oakland, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 20, signed copies of the notice in sufficient numbers for posting by the Employer at its Santa Clara and San Francisco, California facilities, if it is willing, in all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 19, 2001

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

## NOTICE TO MEMBERS

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

<sup>1</sup> For the reasons set forth in his partial dissent in *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375, 383-384 (1998), Chairman Hurtgen would not limit the relief due Charging Party Belmonte, but rather would impose full make-whole remedial liability on the Respondent in the event that Belmonte's grievance cannot be processed and the General Counsel proves in compliance that a timely pursued grievance on his behalf would have been successful.

<sup>2</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## LONGSHOREMEN ILWU LOCAL 6

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to process the grievance relating to Brian Belmonte's rate of pay, or a grievance filed by any other employee, for unfair, arbitrary, or invidious reasons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly request Professional Messenger, Inc. d/b/a Professional Messenger Courier, Express Services Overnight and Taylor-Price Attorney Service to consider the grievance of employee Brian Belmonte re-

lated to his rate of pay and, if the Employer agrees to do so, WE WILL process the grievance with due diligence.

WE WILL permit Brian Belmonte to be represented by his own counsel at any grievance proceedings, including arbitration or other resolution proceedings, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible to pursue the grievance, and if the General Counsel of the National Labor Relations Board shows in compliance proceedings that a timely pursued grievance would have been successful, make whole Brian Belmonte for any increase in damages suffered as result of our refusal to process that grievance, with interest.

WAREHOUSE UNION LOCAL 6, INTERNATIONAL  
LONGSHORE & WAREHOUSE UNION, AFL-CIO